IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 749 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

==

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any OrJJJJJ : NO

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

5. Whether it is to be circulated to the Civil Judge? : NO

Nos. 1 to 5 No

PRAKASH SALES AGENCIES

Versus

S H SHAIKH

Appearance:

MR ARUN H MEHTA for Petitioners
NOTICE SERVED for Respondent No. 1
MR BY MANKAD, ASSISTANT PUBLIC PROSECUTOR
for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

The petitioners have filed this petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure praying that the prosecution launched against the petitioners being Criminal Case No. 1655 of 1984 on the file of the learned Judicial Magistrate,First Class, 5th Court, Surat be quashed. The facts leading to this petition are as follows :

The 6th petitioner is a limited company which manufactures insecticides, amongst other items at Bombay. The petitioner No.7 is the Area Sales Manager of the 6th petitioner. The first petitioner is a firm carrying on the business of selling insecticides manufactured by the 6th petitioner. The second petitioner is the main partner of the first petitioner and the third petitioner is the Manager of the first petitioner. The 4th petitioner is the whole-sale distributor of the insecticides manufactured by the sixth petitioner and the petitioner No.5 is the responsible and the main partner of the fourth petitioner firm. On 19.3.1983 one Shri B.K.Desai, the then Agricultural Inspector, Surat went to the business premises of the first petitioner.. At that time the petitioners No.2 and 3 were present. On the same day Shri Desai took samples for analysis of the insecticides of 'Tagerol 50W'. According to the petitioners on these packets the following description appeared :

1. Commercial name of the insecticides Taferol 50W.
2. Active ingredient DDT 50 percent.
3. Weight to Weight.
4. Batch No.B 6.
5. Data of manufacture : August '82.
6. Expiry Date : July '83.
7. ISI No.565.
8. Manufacture's name : Rallis India.

The inspector took three packets as sample for analysis and after following the procedure one of the samples was given to the third petitioner there and then. The second sample was sent by Regd.Post after following prescribed procedure to Gandhinagar Pesticides Testing Laboratory for analysis according to law. The third sample was to be produced in the Court.

After receiving the analysis report dated 5.5.1983 he served a show cause notice together with the

report on 11.5.1983 upon the petitioners no. 1, 2 and 3. It is alleged that on analysis, the aforesaid sample was found to contain 82.62% of active ingredients instead of 50% and, therefore, it was found to be substantive. It is averred in the petition that on May,1983 the petitioners no.1,2 and 3 applied to the Inspector under section 24(3) of the Insecticides Act,1968 intimating that they intended to adduce evidence to controvert the report. However, the Agricultural Inspector by letter dated 4.7.1984 replied that the necessary permission could be obtained from the Court as and when the case is filed. The petitioner again wrote another letter on 7.7.1983 repeating the demand to permit them to lead evidence to controvert the report but it was again rejected by Inspector by his letter dated 18.7.1983.

On 9.3.1984 the Agricultural Inspector, Surat filed Criminal Complaint No. 1655/84 against the petitioner alleging that the petitioner had committed offence punishable under section 18(1)(a) read with section 3(k)(viii) punishable under section 29(1)(a).The learned Magistrate issued process against the petitioners. The petitioners entered appearance and gave an application (exhibit 11) to discharge them on various grounds stated in the application. One of the grounds was that since the prosecution was launched after the date of the expiry of the pesticide the continuation of the proceedings would amount to abuse of the process of the Court. The learned Magistrate, however, by his order dated 16.10.1984 dismissed the said application. The petitioners have, therefore, filed this petition under Articles 226 and 227 of the Constitution for quashing of the complaint.

Mr.A.H.Mehta, learned Counsel for the petitioners submitted that no action was taken by the Insecticide Inspector to have the sample retested from the Central Insecticides Laboratory in terms of their request and that by the time they were asked to appear in the Court to stand their trial, the shelf life of the insecticide, of which sample was taken had already expired. The petitioners were therefore deprived of their valuable right of their defence and since they were prejudiced, it would be an abuse of the process of the court for the complaint to proceed further.

Now in the present case it is not in dispute that the petitioners did write a letter dated 23.5.1983 to the Agricultural Inspector intimating that they intended to adduce evidence to controvert the report. This application was made under section 24(3) of the Act

within the prescribed period of 28 days. The contention which the learned Counsel for the petitioner has canvassed was upheld by the Supreme Court in State of Haryana Vs. Unique Farmaid(P) Ltd. (1999) 8 SCC Pg.190. In para 12 of the said decision the Supreme Court held as follows :

> "12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus;, prejudicing them in their defence".

The Supreme Court therefore held that the High Court was right in concluding that it will be an abuse of the process of the Court if the prosecution is continued against the accused persons and the High Court has rightly quashed the criminal complaint.

The ratio of the said decision is squarely applicable to the facts of the present case and since the complaint was filed after expiry date of the insecticides the petitioners have been deprived of their valuable right conferred on them to have the sample tested from the Central Insecticides Laboratory. The prosecution, therefore, deserves to be quashed on that count.

The petition is therefore allowed and the Criminal Case No.1655/84 on the file of the learned JMFC,

5th Court,Surat in which the petitioners are accused is hereby quashed. Rule made absolute accordingly.

---

m.m.bhatt